

# ***Missouri Court of Appeals - Western District***

## ***Quick Guide To Appellate Rules***

### **I. JUDGMENT AND JURISDICTION**

#### **A. JUDGMENT**

Generally, an appeal may be taken only from a final judgment. A judgment is final and appealable when a writing signed by a judge and denominated "judgment" or "decree" is filed. Rule 74.01(a). A final judgment disposes of all issues, claims, and parties. In the absence of a final judgment, the appeal is premature.

A judgment that disposes of fewer than all parties or claims may be made final for purposes of appellate review if the trial court makes an express determination that there is "no just reason for delay." Rule 74.01(b). In the absence of this express determination, the appellate court has no jurisdiction. Tendai v. Mo. State Bd. of Registration for the Healing Arts, 77 S.W.3d 1, 2 (Mo. banc 2002).

In a civil case, a motion for new trial or to amend the judgment must be filed within 30 days after the entry of a judgment. Rule 78.04. The time for filing the motion for new trial or to amend the judgment in a civil case may not be extended either by the trial court or the appellate court. Rule 44.01(b). In civil cases, the judgment becomes final 30 days after the entry of the judgment if no timely motion for new trial is filed. Rule 75.01. In jury-tried cases, allegations of error must be included in a motion for new trial to be preserved for appellate review. Rule 78.07.

If a timely motion for new trial is filed, the judgment becomes final at the expiration of 90 days after the filing of the motion or, if such motion is passed on at an earlier date, the latter of: (1) 30 days after the entry of judgment, or (2) disposition of the motion. Rule 78.06; Rule 81.05(a). A timely filed motion for new trial is overruled if the trial court does not rule on it within 90 days after the date the timely motion is filed. Rule 78.06.

In a criminal case, the judgment is final when the motion for new trial is overruled, allocution given, judgment and sentence entered in accordance with the jury verdict, and sentence is imposed. State v. Welch, 865 S.W.2d 434, 435 (Mo. App. 1993). In cases where no sentence is imposed, there is no right of appeal. State v. Lynch, 679 S.W.2d 858, 860 (Mo. banc 1984). In a criminal case, the motion for new trial must be filed 15 days after return of the verdict. The time may be extended by the court for one additional period of 10 days. Rule 29.11(b). A motion for new trial is optional in a case tried without a jury. Rule 29.11(e). In jury-tried cases, allegations of error must be included in a motion for new trial to be preserved for appellate review. Rules 29.11(d).

## **B. JURISDICTION**

This Court has jurisdiction of all appeals, except where jurisdiction is vested in the Missouri Supreme Court, pursuant to article V, section 3 of the Missouri Constitution, from cases of the following courts:

1. Circuit Courts - See generally § 512.020
2. Associate Circuit Courts - See §§ 512.180.2 and 543.335 for the circumstances under which an appeal may be filed with this Court directly from an associate circuit judge.
3. Probate Courts - See § 472.160
4. Administrative Appeals

## **II. NOTICE OF APPEAL**

### **A. FILING THE NOTICE OF APPEAL**

Generally in civil and criminal appeals, the notice of appeal is filed with the clerk of the trial court no later than 10 days after the judgment becomes final. Rules 30.01(d) and 81.04(a).

In a civil case, any party filing a notice of appeal in the trial court shall serve a copy of the notice of appeal on all other parties to the judgment pursuant to Rule 43.01. The clerk of the trial court also shall serve the notice of appeal, and any jurisdictional statement filed in the circuit court, on all parties to the judgment other than the party or parties taking the appeal. 81.08(d).

In a criminal case, the clerk of the trial court shall give notice of the filing of the notice of appeal and shall mail the notice of appeal and any jurisdictional statement to the appellate court. Rule 30.01(h).

#### **1. Notice of Appeal Form**

The form and contents of a notice of appeal are contained in Form 8-A for both criminal and civil cases. Rules 30.01(e) and 81.08(a).

The notice of appeal must specify:

The parties taking the appeal,  
The judgment or order appealed from, and  
The court to which the appeal is taken.

#### **2. Information Form**

In a civil case: Appellant must file a Civil Case Information Form Supplement. Western District Special Rule XIV. Western District Form 1.

In a criminal case: Appellant must file the Criminal Case Information Form. Western District Special Rule XIV. Western District Form 2. The Appellant must also file a copy of an appeal bond if Appellant has been released on bond pending appeal.

#### **3. Copy of Judgment**

4. Docket Fee – If Required

No trial court clerk shall accept or file a notice of appeal unless:

- (1) A docket fee of \$70.00 is paid,
- (2) A party is not required by law to pay the fee; or
- (3) An order permitting the appellant to prosecute the appeal in forma pauperis accompanies the notice of appeal. Rules 81.04(d), 30.01(d); See also § 488.031.

**B. CROSS-APPEAL**

If a notice of appeal is timely filed by a party, any other party may file a notice of appeal within 10 days of the date the first of notice of appeal was filed. Rule 81.04(b). (The Court generally consolidates all appeals arising from the same circuit court judgment into one case for judicial efficiency. Any party by motion may request that appeals be consolidated.)

**C. LATE NOTICE OF APPEAL**

If a party fails to file a timely notice of appeal, a party may seek leave from the Court of Appeals to file a late notice of appeal. To seek leave, a party must file with the Clerk of the Court of Appeals a written motion for special order permitting a late notice of appeal. Leave to file a late notice of appeal can be filed:

Civil – within 6 months from the date the judgment became final. The Court of Appeals may issue a special order only upon motion, with notice to the adverse parties, and a showing by affidavit or otherwise that the delay was not due to the appellant's culpable negligence. 81.07(a).

Criminal – within 12 months after the judgment becomes final, including post-conviction proceedings. The Court of Appeals may issue a special order in its discretion "for good cause shown." Rule 30.03.

In either case, a copy of the final judgment from which the appeal is sought shall be attached to the motion. When a special order is granted, the clerk of the trial court shall permit the appellant to file a notice of appeal within the time specified by the appellate court. Rules 30.03 and 81.07(a). The notice of appeal should not be filed with the trial court until after the appellate court has granted the motion. If a notice of appeal has been previously filed, it is still necessary to file a new notice of appeal.

**D. INTERLOCUTORY APPEALS BY STATE**

Pursuant to § 547.200, the State may appeal from an order: quashing an arrest warrant, suppressing evidence, suppressing a confession or admission, or from an order that the accused lacks mental capacity or fitness to proceed. The notice of appeal must be filed in the trial court within 5 days of the entry of the order. § 547.200.4; See also Rule 44.01(a). The filing of the record on appeal and the briefing cycle are expedited. Rule 30.02.

## **E. SPECIAL TIME LIMITS FOR NOTICE OF APPEAL**

Workers' Compensation cases - Notice of appeal must be filed within 30 days of the date of the Commission's decision. § 287.495.1; See also §287.480.1

Unemployment cases - Commission decision becomes final 10 days after the date of notification or mailing of the decision to the parties. § 288.200.2. Notice of appeal must be filed within 20 days of finality. § 288.210. See also § 288.240.

Juvenile Matters - Notice of appeal must be filed within 30 days after final judgment. § 211.261

Termination of Parental Rights - Notice of appeal must be filed within 30 days after final judgment. § 211.261.

## **III. STAY OF EXECUTION/BONDS**

### **A. CIVIL APPEAL**

The filing of a notice of appeal automatically stays execution on a judgment during the pendency of an appeal when the appellant is an executor, administrator, personal representative, conservator, guardian, curator, or when the appellant is a county, city, township, town, school district, or other municipality. Rule 81.09(a).

In all other cases, the appellant may, at or prior to the filing of the notice of appeal, file a supersedeas bond in an amount determined under Rule 81.09(b), which, if approved and accepted by the trial court, shall have the effect of staying execution on the judgment while the appeal is pending. Rule 81.09. A copy of the appeal bond should be filed with the appellate court within 10 days after filing the appeal bond. Rule 81.09(a).

If the notice of appeal has not been filed, a bond may be filed with permission of the trial court. After the notice of appeal has been filed or where an appeal is taken out of time after a special order of the appellate court, the application to file a bond may be made only in the appellate court. The appellate court may, in its discretion, decline to grant the application, issue a stay upon such terms with respect to a supersedeas bond as may be appropriate, or remand to the trial court for a determination in accordance with Rule 81.09. Rule 81.10. It is the general practice of this Court, if it sustains the application, to remand the matter to the trial court to approve the amount and form of the bond.

### **B. CRIMINAL APPEAL**

If a convicted defendant is entitled to a conditional release pending an appeal, the conditions shall be determined by the trial court pursuant to Rule 33. Rule 30.16.

Section 547.170 contains a list of the offenses for which a defendant may not be released on bail pending appeal. A defendant on an appeal bond is only entitled to release until an

opinion is issued affirming the conviction or dismissing the appeal. The appellate court may in its discretion, order the appellant arrested before the opinion is made public. § 547.330.

Western District Special Rule XVIII requires that if an eligible defendant is released on bail pending appeal pursuant to Rules 30.16 and 33.01, the stated conditions of the bond shall be: (1) that the defendant will report to and appear in person before any designated judge of this court or the clerk of this court, with surety if so directed, at such places and times as shall be directed by the court; (2) that the defendant will not depart the geographical jurisdiction of the State of Missouri without prior written permission of this court; (3) that defendant state his place of abode and mailing address on the face of the bond together with the address of his surety, and notify the court immediately in writing of any changes of his place of abode or mailing address; and (4) that the surety notify the court immediately in writing of any change of defendant's place of abode or mailing address.

Failure to comply with the conditions of bond will result in the Court issuing an order for the arrest of the accused. Rule 33.08.

#### **IV. ATTORNEY'S FEES**

Any party claiming an amount due for attorney's fees on appeal pursuant to contract, statute, or otherwise and which this Court has jurisdiction to consider, must file a separate written motion before submission of the cause. Western District Special Rule XXIX. Motions for attorney's fees on appeal concerning domestic issues must be filed in the circuit court. § 452.355. Under § 452.355, the circuit court has jurisdiction in such cases to award attorney's fees for services rendered on appeal, even after the appeal has been filed. Travis v. Travis, 63 S.W.3d 296, 299 (Mo. App. 2001).

#### **V. SETTLEMENT CONFERENCE**

After the notice of appeal has been filed, the Court may schedule a settlement conference for the purpose of exploring the possibility of settlement. If any party fails to comply with any part of the settlement conference scheduling order, they may be subject to sanctions, including dismissal. Western District Special Rule XXXVI.

#### **VI. MOTIONS, FAXES, DROP BOX**

##### **A. MOTIONS**

All motions must be in writing and must be filed with the Clerk's office. Motions should be addressed to the Clerk of the Court. Rule 84.20. All motions must be signed and must include proof of service upon opposing counsel. Rules 84.01, 84.07, 84.11, 30.07, and 20.04. Routine administrative motions require only an original; no copies are necessary. Unless otherwise ordered by this Court, suggestions in opposition may be filed within 5 days after the date of filing. Rule 84.01(a). Motions are decided on the pleadings; there is no oral argument unless directed by the Court. Rules 84.01(a) and 30.10. Motions are

generally held 5 business days before disposition. Orders ruling on the motions are faxed or mailed to the attorneys of record.

**B. FAX FILINGS Western District Special Rule XXV**

This Court accepts filings by fax at 816-889-3668. Routine motions, pleadings, or correspondence, which do not require a filing fee and which require only the original for filing, will be accepted for filing by facsimile transmission if the document, together with any supporting documentation, does not exceed 15 pages. Pleadings or other papers filed by fax shall have the same effect as an original filing. Rule 84.01(b).

Faxed filings received before 4:30 p.m. of a regular workday, excluding holidays, will be deemed filed as of that day. Filings received after 4:30 p.m. of a regular workday, excluding holidays, will be filed on the next regular Court workday. Filings, other than routine motions, pleadings, or correspondence, will not be accepted by fax. Examples of documents which would not be accepted include: records on appeal, briefs, writ petitions, motions for rehearing, transcripts, legal files, and suggestions in opposition to motions for rehearing or to petitions for writs.

**C. DROP BOX FILINGS**

A drop box is located to the left of the front door of the Courthouse at 1300 Oak Street for after-hours filings. All documents and filings put in the drop box are considered filed as of 4:30 p.m. the evening dropped. If a document is placed in the drop box after 4:30 p.m. on Friday and prior to 8:00 a.m. Monday, it is considered filed Friday. Documents **MUST** be filed in the Clerk's Office during business hours.

**VII. RECORD ON APPEAL**

The record on appeal consists of two parts - the "legal file" and the "transcript."

**A. LEGAL FILE**

The legal file shall contain all of the record, proceedings, and evidence necessary to the determination of all questions to be presented to the court by either party for decision. The legal file should be ordered from the clerk of the trial court within 30 days after the notice of appeal has been filed. Rule 81.12(c) and Rule 30.04 (c ).

In a civil case, the legal file shall always include in chronological order:

- (1) circuit court docket sheets;
- (2) pleadings upon which the action was tried;
- (3) the verdict;
- (4) findings of the court or jury;
- (5) judgment appealed from;
- (6) motions and orders after judgment;
- (7) notice of appeal.

Rule 81.12(a)

In a criminal case, the legal file shall always include in chronological order:

- (1) circuit court docket sheets;
- (2) indictment or information on which the defendant was tried;
- (3) defendant's arraignment or waiver thereof and plea;
- (4) the fact of defendant's presence at the trial;
- (5) the verdict;
- (6) any motion for new trial or waiver thereof and plea or other after-trial motion;
- (7) the court's rulings thereon;
- (8) the fact that allocution was accorded defendant;
- (9) the judgment and sentence;
- (10) notice of appeal.

Rule 30.04(a)

The documents should start with the oldest document and progress in chronological order ending with the notice of appeal. Western District Special Rule XIX.

Generally, the following items should be omitted unless necessary to the resolution of issues on appeal: motions, continuances, abandoned pleadings, briefs, memoranda, notices of filing, subpoenas, summonses, motions to extend time, affidavits and admissions of service, notices of settings, jury lists, and depositions and notices. Rules 30.04(b) and 81.12(b).

The legal file shall be firmly bound and labeled with a red cover that shall contain the style of the case, the Western District Appeal Number, and the name and address of the filing attorney or party. The legal file shall be paginated and contain an index of the documents included by page number and shall not contain more than 200 pages per volume. If fasteners are used to bind the legal file, they shall extend a full one-inch beyond the depth of the volume. Rules 81.18(d), 30.04(d), Western District Special Rule XIX.

The legal file must be certified by the clerk of the trial court to consist of true copies of the portions of the record filed in the trial court. Rules 81.15(a) and 30.04(g). Certification is not necessary if the parties agree in writing that the legal file is true and accurate. Rule 81.15(c) and Rule 30.04(g).

## **B. TRANSCRIPT**

The transcript must contain the portions of the proceedings and evidence not previously reduced to written form. Rules 30.04(a) and 81.12(a). The appellant must order the transcript, in writing, from the court reporter or from the clerk of the trial court if the proceedings were electronically recorded, or if there was no reporter. Rule 81.12(c) and Rule 30.04(c). The Office of the State Court Administrator in Jefferson City supervises the transcriptions of proceedings ordered from the clerk that have been recorded electronically.

The written order for the transcript should designate the portions of the proceedings and evidence not previously reduced to written form that are to be included in the transcript.

Rule 81.12(c), Rule 30.04(c). Within 10 days of receiving a request for a transcript, a court reporter shall provide written notification of the amount of the estimated charges. A deposit in the amount of the estimated charges shall be paid within 10 days of the written notification by the court reporter. § 512.050. If the appellant is appealing *in forma pauperis*, the appellant will receive the transcript at no cost.

In civil cases, the transcript must be ordered, in writing, within 10 days after the notice of appeal is filed. Within 10 days after payment of the charges, appellant shall file a written certificate in the appellate court stating the date on which the transcript charges were paid. Rule 81.12(c).

In criminal cases, the transcript must be ordered, in writing, within 30 days of filing the notice of appeal. A copy of the written order must also be filed with the Court of Appeals and served on respondent. Rule 30.04(c).

In all cases:

- The transcript pages shall be numbered consecutively and must be preceded by a complete index. Rules 30.04(d) and 81.14(b).
- The transcript must be certified by the court reporter as a true and accurate reproduction of the proceedings transcribed. Rules 30.04(g) and 81.15(b).
  - Certification is not necessary if the parties agree in writing that the transcript is true and accurate. Rules 30.04(g) and 81.15(c).
- The transcript shall be prepared in accordance with Rule 81.18, but filed in page reduction format. Western District Special Rule XXVII.
- The transcript shall be accompanied by a floppy disk or disks containing the transcript. Western District Special Rule XXVIII.

Generally, the following items should not be included unless necessary: voir dire, opening statements, closing arguments, MAI 2.01, depositions, and evidence regarding damages. Rule 81.12(b) and Rule 30.04(b).

### **C. RECORD ON APPEAL DEADLINES AND SPECIFIC RULES**

The record on appeal must be filed with the appellate court within 90 days from the date of filing of the notice of appeal, if both a legal file and a transcript are to be filed. If the record on appeal consists of only a legal file, it is due within 30 days. Rules 81.19 and 30.04(f).

- Termination of Parental Rights or Adoption appeals: the record on appeal is due 30 days after the notice of appeal is filed. Western District Special Rule XXX.
- Appeals Affecting the Custody of Children: the record on appeal is due 60 days after the notice of appeal is filed. Western District Special Rule XXX.



- Interlocutory Appeal by State: the record on appeal is due within 15 days after the notice of appeal is filed. Rule 30.02(b)

A copy of the Record on Appeal shall be served on the respondent. Proof of service on the respondent shall be filed with the record on appeal. Rules 84.07(a) and 30.04(f).

In civil cases, a copy of the index of the transcript and the index of the legal file shall be filed with the clerk of the trial court. Rule 81.12(d).

In criminal cases, a copy of the transcript and the index of the legal file shall be filed with the clerk of the trial court. Rule 30.04(f).

#### Extension Of Time To File Record On Appeal

The appellate court, either on application or on its own motion, may enlarge or shorten the time for filing the record on appeal. Rule 81.20. If an extension is sought because the transcript has not been completed, the appellant or counsel must request from the court reporter or the Office of the State Court Administrator, whichever is appropriate, a written statement in support of the request for an extension. Western District Special Rule XV(A) and Western District Form 3.

#### **D. SUPPLEMENTAL RECORD**

If the appellant omitted anything material at the time the record was filed and wants to file additional parts of the record, appellant may file a motion accompanied by the supplemental record.

If the respondent is dissatisfied with the record on appeal filed by appellant, the respondent may, within the time for filing its brief, file such additional parts of the record on appeal as respondent considers necessary. Rules 81.12(c) and 30.04(c). If the time to file a respondent's brief has passed, a motion must be filed requesting permission to file a supplemental legal file or transcript. The supplemental record must comply with the filing requirements for a transcript or legal file. Rules 81.15(e) and 81.12(d).

The appellate court may, if it deems necessary, order that a supplemental record on appeal be prepared and filed by either party or by the clerk of the trial court. Rule 81.12(f) and 30.04(h).

#### **E. EXHIBITS**

Appellant is responsible for depositing in the appellate court all exhibits that are necessary for the determination of any point relied on. Rule 81.12(e). In civil cases, original exhibits shall be deposited on or before the day the reply brief is due, or when the court so directs, whichever is earlier. Rule 81.16. In criminal cases, exhibits shall be filed or deposited on or before the day the case is set for hearing, or within ten days of request by the clerk prior to the day of argument, whichever is earlier. If the case is taken under submission without oral argument, exhibits shall be filed with the Clerk within 5 days after the case is taken under submission. Rule 30.05. Any exhibits not timely deposited may be considered as immaterial to the issues on appeal. Rule 81.12(c); Rule 30.05.

Exhibits deposited in this Court shall be contained in an envelope that is labeled with the number and style of the case; the name and address of the attorney filing same with the Court; an index of the exhibits enclosed; and certification. A separate index of all exhibits must be provided for filing in the court file. If an exhibit is too large to be placed in an envelope, the exhibit shall be labeled with the number and style of the case, along with an index to be filed and placed in the court file. Western District Special Rule IV.

If deposited exhibits are not removed from the custody of the clerk within 30 days after the case is finally decided they may be destroyed or disposed of by the clerk upon prior notice to the parties. Exhibits shall not be destroyed or disposed of in post-conviction proceedings. Rule 81.16(d).

#### **F. CROSS-APPEAL**

If more than one appeal is taken from the same judgment, a single record on appeal may be prepared with each appellant sharing the cost. Rule 81.14(a).

### **VIII. BRIEFS**

#### **A. DUE DATES**

**Appellant's Brief** – due within 60 days after the record on appeal is filed. Rule 84.05

**Respondent's Brief** – due within 30 days after filing of appellant's brief. Rule 84.05

**Reply Brief** – due within 15 days after filing of respondent's brief. Rule 84.05

**Amicus Curiae or Intervenor's Brief** – consent of all parties or by order of the Court. Western District Special Rule XXVI.

#### **Termination of Parental Rights Cases - Western District Special Rule XXX**

Appellant's brief due within 30 days after the filing of the record on appeal.

Respondent's brief due within 30 days after the filing of the appellant's brief.

Reply brief, if any, is due within 15 days after the filing of the respondent's brief.

#### **B. CROSS APPEALS**

The plaintiff in the court below is deemed the appellant-respondent, unless the parties otherwise agree or the court otherwise orders. Rule 84.04(j).

- Appellant-Respondent's initial brief shall be filed as provided in Rule 84.04 and Rule 84.05.
- Respondent-Appellant's initial brief shall contain all the issues and argument involved in the respondent-appellant's appeal and the response to the brief of the appellant-respondent.
- The appellant-respondent may file a second brief in response to the respondent-appellant's brief setting forth respondent-appellant's

appeal and in reply to the respondent-appellant's brief opposing appellant-respondent's appeal.

- The respondent-appellant may file a reply brief in reply to appellant-respondent's response to the issues presented by respondent-appellant's appeal.

## **C. GENERAL FORMAT OF BRIEFS**

### **I. Color of Cover of Brief – Rule 84.06(f)**

**Appellant's Brief** – White Cover (Second Briefs of Appellant-Respondent in cross-appeals – light brown)

**Respondent's Brief** – Gray Cover

**Reply Brief of Appellant** – Orange Cover

**Amicus Curiae or Intervenor's Brief** – Red Cover

### **II. Paper Size, Type Style, and Spacing**

#### **Rule 84.06(a); Western District Special Rule XII(B)**

Paper: 8-1/2 X 11 inches and weighing not less than nine pounds to the ream.

Type: must be double-spaced, except for the cover, certificate of service, certificate required by Rule 84.06(c), and signature block, which may be single-spaced. The type should be only on one side of the page, with margins not less than one inch on each side.

Font: use characters throughout the brief, that are not smaller than 13 point, Times New Roman font on Microsoft Word.

Pagination and Binding: All pages must be numbered after the cover page, and the brief must be securely bound on the left.

Typewritten Briefs: All briefs shall be prepared using computer software unless an exception applies. A person allowed to appeal as a poor person and who is unable to produce a brief by computer software may file a typewritten brief. Rule 84.06(e). Any other person unable to produce a brief as provided by Rule 84.06(a) or Rule 84.06(d) may file, with leave of court, a typewritten brief. The requirements for a typewritten brief are the same as listed above; however, the type size must be not less than ten pitch and ten characters to the inch. Rule 84.06(e).

### **III. Length of Briefs – Western District Special Rule XLI; Rule 84.06**

All briefs shall be prepared in accordance with Rule 84.06, provided however that the following page limitations shall apply to briefs prepared pursuant to Rule 84.06(a) or (d):

- (1) Appellant's initial brief and all briefs in a cross appeal shall not exceed 15,500 words or, if a mono-spaced text face is used, 1100 lines of text.
- (2) Respondent's brief shall not exceed 13,950 words or, if a mono-spaced text face is used, 990 lines of text.
- (3) Any reply brief shall not exceed 5115 words or, if a mono-spaced text face is used, 363 lines of text.

#### **Typewritten Briefs**

Appellant's brief (and all briefs in a cross appeal) shall not exceed 50 pages.

Respondent's brief shall not exceed 45 pages.

Reply brief shall not exceed 15 pages.

A party may file a motion requesting permission from the court to exceed the limits set forth in this rule. Such motion shall be filed at least ten days prior to the due date for the brief. The court may grant such request only on a showing of good cause.

In calculating the limits set forth in this rule, this court shall not count the words or lines of text of a brief's table of contents, table of authorities or appendix.

### **D. SECTIONS OF BRIEF – Rules 84.04, 30.06**

The contents of the brief must conform to the requirements set forth in Rules 30.06 and 84.04. Briefs not in compliance with the rules may be stricken, the party may be ordered to file a new or amended brief, or the appeal may be dismissed. In general, under Rules 30.20 and 84.13, the Court shall not consider any allegations of error that are not briefed or are not properly briefed.

#### **I. Appellant's Brief - Rules 84.04(a), 30.06**

The appellant's brief shall contain:

Table of Contents - A detailed table of contents with page references, and a table of cases (alphabetically arranged), statutes and other authorities cited, with reference to the pages of the brief where they are cited. Rule

84.04(a)(1).

Jurisdictional Statement - A concise statement of the grounds upon which the jurisdiction of the reviewing court is based. Bare recitals are insufficient. Rules 84.04(b) and 30.06(b).

Statement of Facts - A fair and concise statement of the facts relevant to the issues presented for review. Page references to the record on appeal must be included. Rules 84.04(c), 84.04(i), 30.06(c), 30.06(e).

Points Relied On - A brief statement of what actions or rulings are sought to be reviewed and why they are claimed to be erroneous. Immediately following each point relied on, the party must list the cases and other legal authority, not to exceed four, upon which the party principally relies. Rules 84.04(d), 30.06(d).

Each point relied on shall: (A) identify the trial court ruling or administrative ruling that the appellant challenges; (B) state concisely the legal reasons for the appellant's claim of reversible error; and (C) explain in summary fashion why, in the context of the case, those legal reasons support the claim of reversible error.

The point shall be in substantially the following form:

"The trial court erred in [*identify the challenged ruling or action* ], because [*state the legal reasons for the claim of reversible error* ], in that [*explain why the legal reasons, in the context of the case, support the claim of reversible error* ]."

Argument - The argument must substantially follow the order of the "Points Relied On." The point relied on shall be restated at the beginning of the section of the argument discussing that point. The argument shall also include a concise statement of the applicable standard of review. Page references to the transcript or legal file must also be included. If a point relates to the giving, refusal, or modification of an instruction, the instruction must be set out in full in the argument portion of the brief. Rules 84.04(e), 84.04(i), 30.06(c), 30.06(e).

Conclusion - At the end of the brief, the party should provide a short conclusion stating the precise relief sought. Rule 84.04(a)(6).

Appendix – A party's brief shall contain or be accompanied by an appendix. Rule 84.04(h); Western District Special Rule XXXVIII. The appendix shall contain:

- The judgment, order, or decision in question;

- The complete text of all statutes, ordinances, or rules claimed to be controlling as to a point on appeal;
- The complete text of any instruction to which a point relied on relates;
- Other information pertinent to the issues discussed in the brief, such as copies of exhibits, excerpts from the written record, and copies of new cases or other pertinent authorities.
  - Original exhibits may not be included in the appendix. Copies of exhibits or excerpts from the record may be included in the appendix ONLY IF the original exhibits and the excerpts are properly deposited as part of the record on appeal in accordance with Rule 81.12(e), 81.16, 30.05
- Index to Appendix must list separately each item in the appendix. If it contains less than 30 pages, then it must be attached to the back of the party's brief. If it contains 30 pages or more, then the appendix must be separately bound. The pages in the appendix shall be numbered consecutively beginning with page A1 and shall not be counted as part of the brief.

\* This court reviews Appellant briefs soon after filing for substantial compliance with Rule 84.04. If a brief is not in proper form, the Court will strike the brief and require an amended brief to be filed within 15 days.

## **II. Respondent's Brief**

The respondent's brief shall include a detailed table of contents and table of authorities and an argument in conformity with Rule 84.04(a)(1) and 84.04(e). If respondent is dissatisfied with the accuracy or completeness of the jurisdictional statement or statement of facts in appellant's brief, the respondent's brief may include a jurisdictional statement or statement of facts. Rule 84.04(f), 30.06(d). The argument portion shall contain headings identifying the points relied on contained in the appellant's brief to which each argument responds. The respondent's brief may also contain additional arguments in support of the judgment that are not raised by the points relied on in the appellant's brief. Rule 84.04(f); 30.06(d).

## **III. Reply Brief**

The appellant may file a reply brief but shall not reargue points covered in the initial brief. Rules 84.04(g) and 30.06(d).

## **IV. Supplemental Brief**

No supplemental brief may be filed by a party without leave of court. The Chief Judge or the Presiding Judge of the Division to which a case has been assigned may order additional or supplemental briefs from counsel. Counsel may call

attention to intervening decisions or new developments by directing a short letter providing supplemental citations to the clerk in accordance with Rule 84.20 or Rule 30.08. Western District Special Rule XXXVII.

#### **V. Amicus Brief**

A brief may be filed by amicus curiae in cases before the Court on the merits. The brief shall be filed only with the consent of all parties or upon order of the Court. The procedure is set out in Western District Special Rule XXVI.

#### **E. Miscellaneous Requirements For All Briefs**

##### **Certificate of Compliance – Rule 84.06(c)**

The brief shall contain a certificate by the lawyer or individual acting pro se that states the brief complies with the limitations contained in Rule 84.06(b), the number of words or lines in the brief, and the information that is required by Rule 55.03.

##### **Electronic Copy – Rule 84.06(g), Western District Special Rule XXXII, XXXIII**

In addition to filing a written brief, an electronic copy, on a diskette or CD-Rom, shall be filed and shall comply with the requirements of Rule 84.06(g) with regard to size, labeling, format, and virus scanning. See rules for specific requirements.

##### **Certificate of Service - Rules 20.04, 30.07, 84.07**

The file copy of each brief must include a certificate of service upon opposing counsel. Proof of service may be shown by acknowledgement of receipt or by affidavit or by written certificate of counsel making such service.

### **IX. DOCKETING**

After the appellant's and respondent's briefs have been filed, or time has expired for respondent's brief to be filed, cases are docketed for oral argument or for submission without argument. If a case is placed on the submission without argument docket, a letter is sent to the parties informing them that they can request oral argument. The parties can request oral argument in writing within 10 days of the date of the letter. Parties with cases placed on the oral argument docket will receive a docket along with a letter containing the time, date, and division that will hear the argument. Western District Special Rule I.

### **X. ORAL ARGUMENT**

Oral argument is optional. Cases may be submitted on the briefs without oral argument. A respondent who fails to file a brief will not be permitted to participate in oral argument.

The published oral argument docket will indicate whether the Court has designated a particular case either: (1) Extended Oral Argument - a maximum argument time of 15 minutes each for appellant and respondent with 5 additional minutes for rebuttal by appellant; or (2) Regular Argument - for a maximum argument time of 10 minutes each for appellant and respondent with 3 additional minutes for rebuttal by appellant. No additional argument time shall be allowed unless the Court for cause shown before commencement of the argument in any particular case shall order otherwise.

If multiple appellants or respondents desire to present oral argument, they shall divide the allotted time among themselves, but the time shall not exceed the maximum time for a single appellant or respondent as provided.

Cross-appeals shall be treated as one cause, and, in such cases, the plaintiff in the trial court shall be entitled to open and close the argument. Western District Special Rule I.

## **XI. OPINION**

In each case, the judicial decision is reduced to writing and filed in the cause. In cases where all judges agree to affirm and believe that an opinion would have no precedential value, disposition may be by a memorandum decision or written order. Rules 84.16(b) and 30.25(b). Opinions are handed down and filed each Tuesday and are available in the Clerk's office. The opinions are also available on the Court's website Tuesday afternoon. One copy of the opinion is mailed to each attorney of record.

## **XII. ADMINISTRATIVE APPEALS**

### **A. Workers' Compensation** - § 287.495

An appeal is taken from a decision of the Labor and Industrial Relations Commission by filing a notice of appeal (Western District Form No. 5 on the Court's website) along with any required docket fee with the Commission within 30 days from the date of the final award. The Commission shall send a copy of the notice of appeal, information form, and the docket fee, if required, to the Clerk of the Court. The Commission shall file with this Court all documents and papers on file together with a transcript of any evidence that shall constitute the record on appeal. § 287.495.1

### **B. Unemployment Compensation** - § 288.210

An appeal is taken from a decision of the Labor and Industrial Relations Commission by filing a notice of appeal (Western District Form No. 5 on the Court's website) within 20 days after the decision has become final. No individual claiming benefits shall be charged a docket fee. § 288.380.5. The Commission shall send a copy of the notice of appeal and information form to the Clerk of the Court. The Commission shall file with this Court all documents and papers on file together with a transcript of any evidence that shall constitute the record on appeal.

### **C. Petitions For Review From Decisions Of The Administrative Hearing Commission**



If review is exclusively with the appellate court pursuant to § 621.189, petitions are filed directly in the Court of Appeals along with the required docket fee. § 621.189, Rule 100.02(b). The petition for review shall specify the party seeking review, the decision sought to be reviewed, and a concise statement of the grounds on which jurisdiction is invoked. Rule 100.02(c). The appellant shall serve a copy of the petition for review on each party of record and the agency. Proof of service shall be filed with this Court. Rule 100.02(d).

The record on appeal shall contain the items set forth in Rule 100.02(e). The record on appeal shall be due within 90 days after filing the petition for review or notice of appeal. Rule 100.02(g). If the record on appeal consists of only a legal file, it is due within 30 days from the date of filing the notice of appeal. Rule 81.19.

The form, contents, filing, and service of briefs and motions shall be as provided in Rule 84. Rule 100.02(i)

#### Reversal of Administrative Agency decision by Circuit Court

If the circuit court reverses a decision of an administrative agency and this Court reviews the decision of the administrative agency rather than the decision of the circuit court, the party aggrieved by the agency decision shall file the appellant's brief and reply brief. Rule 84.05(e).

The appellant shall file a statement that respondent shall file the first brief in accordance with Rule 84.05(e). Appellant shall file the statement with this court on or before the time when the record on appeal is filed and shall serve a copy on respondent. Western District Special Rule XXXV.

### **XIII. CLASS ACTION CERTIFICATION**

A party seeking permission to appeal from an order granting or denying class action certification shall file a petition for permission to appeal within 10 days of the entry of the order. Rule 84.035(a). The petition shall include the items listed in Rule 84.035(b). In reviewing petitions filed pursuant to Rule 84.035 to determine whether to exercise the Court's discretion to permit an appeal, the Court will consider the following circumstances:

- (1) Whether the trial court's denial of class status would effectively end the litigation and any realistic chance that individual claims could be prosecuted;
- (2) Whether the trial court's grant of class status would put substantial pressure on the defendant to settle without regard to the merits of the case;
- (3) Whether an interlocutory appeal of the trial court's class action determination would facilitate the development of the law pertaining to class actions;
- (4) Whether the trial court's order granting or denying class certification is

clearly erroneous; and  
(5) Whether there are any other special circumstances sufficient to justify an interlocutory appeal.

Western District Special Rule XL. A party may file a response opposing the petition within 10 days after the petition is filed. Rule 84.035(c). An original and 3 copies of all filings associated with a petition shall be filed. Western District Special Rule XXXIX(D). The petition to appeal will be decided on the basis of the petition and response without further briefing or oral argument unless the Court otherwise orders. Rule 84.035(e).

If the petition is granted, the appellant shall file a notice of appeal and the required docket fee and all necessary attachments with the appropriate circuit clerk within 10 days of entry of the order granting permission to appeal. Rule 84.035(f). The appellant shall file the record on appeal in this Court, within 20 days after filing the notice of appeal. Western District Special Rule XXXIX(F).

The appellant shall file a brief within 30 days of the filing of the record on appeal. The respondent may file a brief within 20 days of the filing of the appellant's brief. The appellant may file a reply brief within 10 days of the filing of the respondent's brief. Rule 84.035(g).

The appeal of any order granting or denying class action certification shall not stay the proceedings in the trial court unless the trial judge or the appellate court so orders. Western District Special Rule XXXIX(H).

#### **XIV. DISMISSAL OF APPEALS**

**A. Voluntary** - An appellant may file a voluntary dismissal of an appeal in the appellate court at any time prior to submission of the cause. Rules 84.09 and 30.13. After submission, a motion for voluntary dismissal will be at the Court's discretion.

**B. Involuntary** - After the appellant files a notice of appeal, if the appellant fails to take the further steps required to secure review of the appeal, within the periods of time allowed or extended pursuant to the rules, the clerk shall place the case on a dismissal docket. The clerk shall serve notice on all parties that the appeal will be dismissed unless the appellant remedies the default before a specified date, not less than 15 days from the date of the notice. If the default is not remedied by that date, an order of dismissal shall be entered. Rules 84.08 and 30.14(a).

#### **XV. POST-DISPOSITION PROCESS**

##### **A. POST-DISPOSITION MOTIONS**

###### **I. Application for Transfer**

**A. Rule 83.02 and 83.05 – By Court of Appeals**

A case disposed of by an opinion, memorandum decision, written order, or order of dismissal in the Court of Appeals may be transferred to the Supreme Court by order of a majority of the participating judges, regular and special, on their own motion or on application of a party. Transfer may be ordered because of the general interest or importance of a question involved in the case or for the purpose of reexamining existing law. Application by a party for transfer shall be filed within 15 days of the date on which the opinion, memorandum decision, written order, or order of dismissal is filed. An application for transfer shall not exceed 12 pages. No response to an application for transfer shall be filed unless requested by the court, and an order for transfer shall not be granted in the absence of such a request. If the Court requests a response, within 10 days after such request, any other party may file suggestions in opposition to the application, not to exceed 6 pages. Rule 83.06.

**B. Rule 83.04 and Rule 83.05 – By Supreme Court**

If an application for transfer under Rule 83.02 has been denied, the case may be transferred by order of the Supreme Court on application of a party for any of the reasons specified in Rule 83.02 or for the reason that the opinion filed is contrary to a previous decision of an appellate court of this state. Application for such transfer shall be filed in the Supreme Court within 15 days of the date on which transfer was denied by the Court of Appeals. No response to an application for transfer shall be filed unless requested by the Supreme Court. If the Supreme Court requests a response, within 10 days after such request, any other party may file suggestions in opposition to the application, not to exceed 6 pages. Rule 83.06.

\*An original and 5 copies must be filed. Western District Special Rule XII.

\*Rule 30.27 states that Rule 83 governs transfer of criminal appellate cases.

**II. Motion For Rehearing - Rule 84.17(a)(1)**

The motion shall briefly and distinctly state the grounds upon which rehearing is sought. The purpose of a motion for rehearing is to call attention to material matters of law or fact overlooked or misinterpreted by the Court.

**III. Motion to Modify - Rule 84.17(a)(2)**

The motion shall briefly and distinctly state the grounds upon which modification is sought. The purpose of a motion to modify is to correct errors of law or fact that do not affect the disposition of the case.

**IV. Motion to Publish - Rule 84.17(a)(3)**

The motion shall briefly and distinctly explain why the Court's disposition of the appeal has precedential value, in whole or in part.

\*A motion under Rule 84.17 shall be filed within 15 days after the Court files its opinion, written order under Rules 84.16(b) or 30.25(b), memorandum decision, or order of dismissal and may be accompanied by suggestions in support containing citation authority. No suggestions in opposition to a post-disposition motion shall be filed unless requested by the Court. Within 10 days after the Court's request for suggestions, any party may file suggestions in opposition to the motion.

\*An original and 5 copies must be filed. Western District Special Rule XII.  
Rule 30.26 – Rule 84.17 shall govern post-disposition motions in criminal cases.

## **B. MANDATES**

Generally, a decision of the appellate court is considered final at the time the mandate is issued. Meierer v. Meierer, 876 S.W.2d 36, 37 (Mo. App. 1994). Generally, a mandate is not issued until the time for filing a post-disposition motion has expired. If a post-disposition motion is filed, the mandate will not issue until the appellate court and the Supreme Court of Missouri resolve all such motions.

## **XVI. EXTRAORDINARY WRITS**

Article V, section 4 of the Missouri Constitution authorizes the Court of Appeals to issue extraordinary original remedial writs.

The five types of remedial writs are:

1. Prohibition – Rule 97
2. Mandamus – Rule 94
3. Habeas Corpus – Rule 91
4. Quo Warranto – Rule 98
5. Certiorari.

Rules 84.22 through 84.24 set forth the procedure governing extraordinary remedial writs in general. The remedial writs are extraordinary remedies. The writs are distinct from a direct appeal, are not intended as a substitute for appeal, and will not lie if an appeal is possible or where there is another adequate remedy. The Missouri Bar CLE desk book on Appellate Court Practice is helpful in explaining the purpose and application of each of the five extraordinary writs.

The writ duty division of the Court consists of a presiding judge and one other judge. Each writ division serves for a one-month period. A third judge is added to the division if the writ proceeds to the briefing and oral argument stage.

What is needed to file a writ: Rules 94.03; 97.03; 98.03

- (1) Writ Petition
- (2) Suggestions in Support
- (3) Exhibits – shall be attached to the petition along with an index of all exhibits. The exhibits shall be identified in the index by number or letter and page, and, in addition, shall be described so the Court can distinguish

the exhibits. The pages of the exhibits shall be numbered consecutively.

(4) \$70.00 docket fee – Rule 81.04(d)

(5) Writ summary – Civil Procedure Form No. 16 which identifies the parties, the nature of the underlying action, the action being challenged, the relief sought, and the date the case is set for trial or date of any other event bearing upon the relief sought.

(6) Compact Disc - Containing the petition, suggestions in support, any judgment or order that is the subject of the writ proceeding, any exhibits originally prepared by the relator or relator's attorney, and the index of the exhibits as required by Western District Special Rule IV. Western District Special Rule XXXIV(A). In lieu of filing a compact disk or floppy disk, a party may submit an electronic mail file containing all the documents listed above. Western District Special Rule XXXIV(C). Persons in the custody of the Missouri Department of Corrections filing pro se writ petitions are exempt from the requirements of Western District Special Rule XXXIV. Western District Special Rule XXXIV(E).

An original plus 3 copies of these items must be filed. Western District Special Rule XII. Proof of service shall be filed that identifies the name, address, and phone number of each attorney served and the name of the party such attorney represents, and each party served who is not represented by an attorney. Rule 84.24(a)(4).

After the petition is filed, the judges of the writ division shall determine whether to request suggestions in opposition from respondent, issue a preliminary order, issue a peremptory writ, or deny the writ petition. Oral argument is not granted at this stage of the proceedings.

Within 10 days after the filing of the petition for an original writ, the respondent may file suggestions in opposition to the issuance of the writ. A copy of such suggestions in opposition to the writ shall be served on the petitioner or relator prior to or on the day of filing such suggestions. Rule 84.24(c). If the 10-day time limit would defeat the purpose of the writ, on the motion of the petitioner, relator, or the Court on its own motion, may shorten the time or dispense with such time limits altogether for filing suggestions in opposition. Rule 84.24(e).

If the petition is denied - The parties involved will be informed by a written order. The Court rarely states a reason why the petition for the writ is denied. Denial of the petition ends the matter in this Court. Motions for reconsideration shall not be filed. Rule 84.24(m). The relator's only remedy is to file an original petition in the Supreme Court of Missouri.

If a preliminary order is issued – The order may require the respondent to file an answer. The answer admits or denies the allegations of the relator's petition. The order may also set forth a briefing schedule and a date for oral argument. Briefs shall be filed in accordance with Rule 84.04, except that the time for filing the briefs shall be as follows: relator – filed within 30 days from the answer date of the preliminary order; respondent's

brief shall be filed within 20 days thereafter; and if petitioner or relator wants to file a reply brief, it shall be filed within 10 days thereafter. Rule 84.24(i). The Court will thereafter issue an opinion either making the preliminary order permanent or quashing it. Further review of the action shall be allowed only as provided in Rule 83 and Rule 84.17.